

DATE MAILED

JUL 30 2009

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application by Wisconsin Power and Light Company to Construct up to  
200 MW of Wind Generation to be Called Bent Tree Wind Farm, in  
Freeborn County, in South Central Minnesota

6680-CE-173

**FINAL DECISION**

On June 6, 2008, Wisconsin Power and Light Company (WP&L) filed an application with the Public Service Commission (Commission) to construct, own, and operate a new wind electric generation facility. The facility, which would be known as the Bent Tree Wind Farm (Bent Tree), would be located in the townships of Hartland, Manchester, Bath, and Bancroft, Freeborn County, Minnesota, and have a generating capacity of approximately 200 megawatts (MW).

The application is APPROVED, subject to conditions and as modified by this Final Decision.

**Findings of Fact**

1. WP&L is a public utility, as defined in Wis. Stat. § 196.01(5)(a), engaged in rendering electric service in Wisconsin. WP&L is proposing to construct a wind-powered electric generating facility, to be known as the Bent Tree Wind Farm, as described in its application and as modified by this Final Decision. WP&L estimates the total capital cost of the project to be \$497,370,500, based on a commercial operation date of 2010 and current return on construction work in progress (CWIP).

2. Conservation or other renewable resources, as listed in Wis. Stat. §§ 1.12 and 196.025, or their combination, are not cost-effective alternatives to WP&L's proposed facility.

3. The WP&L project, as modified by this Final Decision, satisfies the reasonable needs of the public for an adequate supply of electric energy.

4. The WP&L project, as modified by this Final Decision, will not substantially impair WP&L's efficiency of service or provide facilities unreasonably in excess of probable future requirements. In addition, when placed in operation, the project will increase the value or available quantity of WP&L's electric service in proportion to its cost of service.

5. The WP&L project, as modified by this Final Decision, assists WP&L in complying with its Renewable Portfolio Standard obligations under Wis. Stat. § 196.378.

6. A brownfield site for the project is not practicable.

7. The public interest and public convenience and necessity require completion of the WP&L project.

### **Conclusions of Law**

The Commission has jurisdiction under Wis. Stat. §§ 1.11, 1.12, 196.02, 196.025, 196.395, 196.40, and 196.49, and Wis. Admin. Code chs. PSC 4 and 112, to issue a Final Decision authorizing WP&L, as an electric public utility, to construct and place in operation a wind-powered electric generation facility with a capacity of approximately 200 MW and to impose the conditions specified in this Final Decision.

### **Discussion**

WP&L is a public utility, as defined in Wis. Stat. § 196.01(5)(a), engaged in rendering electric service in Wisconsin. It is proposing to construct Bent Tree with a generating capacity

Docket 6680-CE-173

of approximately 200 MW. The project is being developed by Wind Capital Group, and will be acquired by WP&L from Bent Tree LLC. Wind Capital Group is responsible for site development, and WP&L will be responsible for equipment procurement, engineering, and construction. WP&L states that Bent Tree is an out-of-state project that will receive all approvals applicable in Minnesota.

WP&L will develop the project in phases, and WP&L's application in this docket covers the first 200 MW based on a 2010 commercial operation date. WP&L has not made final turbine selections for the project. The conceptual array for the site represents 400 MW, modeled using a representative turbine model. Associated facilities include access roads, an operations and maintenance building, permanent meteorological towers, an electrical collection system, and a radial interconnection to a transmission substation. Equipment selection, site layout, and spacing are designed to make the most efficient use of land and wind resources, while complying with all applicable rules and regulations related to Minnesota Rules Chapter 7836. WP&L estimates that the project will have an operational life of 25 years.

This Final Decision is the Commission's final action on WP&L's application for authority under Wis. Stat. § 196.49 and Wis. Admin. Code ch. PSC 112 to construct, own, and operate a wind electric generating facility to be known as the Bent Tree Wind Farm. This Final Decision does not exempt WP&L from any required affiliated interest approval associated with this project and/or the acquisition of the project, if required under Wis. Stat. § 196.52.

While Bent Tree is located in Minnesota and will receive all approvals applicable in Minnesota, WP&L, as a public utility, is required to obtain construction authority for the project under Wis. Stat. § 196.49 and Wis. Admin. Code ch. PSC 112. As a result, WP&L is required to

Docket 6680-CE-173

obtain authorization to construct the project from the Commission as the cost of the project exceeds the construction cost filing threshold listed in Wis. Admin. Code § PSC 112.05(3)(a)3.

WP&L is in the process of securing the rights to interconnect Bent Tree to the transmission grid.

Initially, WP&L filed its application under Wis. Stat. § 196.491 and other applicable requirements as an application for a Certificate of Public Convenience and Necessity (CPCN). At its open meeting on September 25, 2008, the Commission ruled that the application is for a Certificate of Authority and must be reviewed under Wis. Stat. § 196.49 and Wis. Admin. Code § PSC 112. The Commission made this determination after considering comments filed in this docket in response to the Commission's June 20, 2008, Notice of Proceeding and Request for Comments about the scope of its authority over out-of-state electric utility construction projects. The Commission's decision regarding the level of the review is included in its Interim Order dated November 6, 2008, in this docket.

The Commission held hearings in this docket in Madison on April 29, 2009. Comments on the proposed project were requested from members of the public in the Commission's January 22, 2009, Notice of Hearing in this docket. No public comments were received.

In its June 20, 2008, Notice of Proceeding and Request for Comments in this docket, the Commission gave notice that this is a Type III action under Wis. Admin. Code § PSC 4.10(3). Type III actions normally do not require the preparation of an environmental impact statement (EIS) or an environmental assessment (EA) under Wis. Stat. § 1.11. The Commission investigated the potential for significant environmental effects that would occur as a result of WP&L's ownership and operation of Bent Tree and determined that preparation of neither an EIS nor an EA is required.

**Project Need**

Results of Commission staff's Electric Generation and Expansion Analysis System (EGEAS) modeling for the proposed project show that Bent Tree is the least-cost option in all modeling scenarios, except in the unlikely no-CO<sub>2</sub>, no-RPS requirement scenario with a 20-year depreciation schedule.

While modeling is an important analytical tool available to the Commission as it conducts its needs determination, it is only one factor to be considered. A Renewable Portfolio Standard (RPS) exists in Wisconsin, and the Commission must consider the utility's obligation to increase the amount of renewable energy resources in its system to meet the RPS. The RPS in 2005 Wisconsin Act 141 (Act 141) and Wis. Stat. § 196.378, which took effect on April 1, 2006, built upon state policy to aggressively increase the level of renewable resources in the electric supply mix. Under these requirements, each Wisconsin electric provider must increase its renewable energy levels by 2 percentage points by 2010 and by 6 percentage points by 2015, above its 2001 to 2003 baseline average. With the addition of Bent Tree, WP&L will add approximately 666,000 megawatt hours (MWh) of renewable energy beginning in 2011 toward meeting its and its wholesale customers' obligations under Act 141 for 2010 through 2014. WP&L's renewable energy obligation under the RPS will increase to approximately 1,130,000 MWh in 2015. Assuming commercial operation by the end of 2010 as planned, this project, along with banked renewable resource credits (RRC) and other purchases, will allow WP&L to meet its 2010 through 2014 obligations under the RPS.

In docket 6680-CE-170, and as supported by evidence in the application and testimony in this case, the applicant needs energy. Placing a wind farm in operation in 2010 to support energy needed at that time and as required by statute in 2015 is consistent with Wis. Stat. § 196.49 and

sound planning principles and not unreasonably in excess of WP&L's probable future requirements. The capacity factors and turbine construction costs make the cost of the project commensurate with the value of service being provided.

Under Wis. Stat. § 196.49(3)(b), at its discretion, the Commission may refuse to authorize a construction project if the project will do any of the following:

1. Substantially impair the efficiency of the service of the public utility.
2. Provide facilities unreasonably in excess of the probable future requirements.
3. When placed in operation, add to the cost of service without proportionately increasing the value or available quantity of service unless the public utility waives consideration by the commission, in the fixation of rates, of such consequent increase of cost of service.

Because of the requirements of the RPS, WP&L requires more renewable resource generating facilities than it currently owns or has under contract. Based on WP&L's application, this project is a means of complying with WP&L's renewable resource requirements and the project meets the criteria specified in Wis. Stat. § 196.49(3)(b). The project will not result in unreasonable excess facilities and will satisfy the reasonable needs of the public for an adequate supply of electric energy.

The Commission must implement a state energy policy when reviewing any application. The Energy Priorities Law establishes the preferred means of meeting Wisconsin's energy demands as listed in Wis. Stat. §§ 1.12 and 196.025(1).

The Energy Priorities Law, Wis. Stat. § 1.12, creates the following priorities:

**1.12 State energy policy.** (4) PRIORITIES. In meeting energy demands, the policy of the state is that, to the extent cost-effective and technically feasible, options be considered based on the following priorities, in the order listed:

- (a) Energy conservation and efficiency.
- (b) Noncombustible renewable energy resources.
- (c) Combustible renewable energy resources.
- (d) Nonrenewable combustible energy resources, in the order listed:
  1. Natural gas.

2. Oil or coal with a sulphur content of less than 1%.
3. All other carbon-based fuels.

In addition, Wis. Stat. § 196.025(1) declares, “To the extent cost-effective, technically feasible and environmentally sound, the commission shall implement the priorities under s. 1.12(4) in making all energy-related decisions . . . .” Because wind is a noncombustible renewable resource, WP&L’s proposed electric facility fits within the second-highest statutory priority.

While each of these statutes is applicable to the project at hand, there is a certain degree of friction that exists between them that must be reconciled. Wisconsin Statute § 196.49 requires the Commission to consider whether a proposed project “provide[s] facilities unreasonably in excess of probable future requirements.” The RPS law under Wis. Stat. § 196.378(2) requires the utility to build to meet its 2010 benchmark regardless of whether new generation is needed. It should be noted that Wis. Stat. § 196.49 does not prohibit the construction of unnecessary generation, but gives the Commission the discretion to reject or approve the application for generation that is “in excess of future probable requirements.”

The second area to consider is the competing directives on the cost of the proposed generation. Wisconsin Statute § 196.49 requires the Commission to consider whether the proposed project “add[s] to the cost of service without proportionately increasing the value or available quantity of service.” In contrast, the RPS statute requires utilities to increase their renewable energy percentage and, under Wis. Stat. § 196.378(2)(d), the Commission shall allow a utility to recover the cost of renewable energy from the ratepayer.<sup>1</sup> While the modeling in this case suggests that WP&L’s proposed project is the least-cost option in all relevant scenarios,

Wis. Stat. § 196.49(3)(b) gives the Commission the discretion to reject or approve an application for a project that disproportionately adds to the cost of service when considering the value or available quantity of service.

The third area of overlap arises between the RPS and the Energy Priorities Statute, Wis. Stat. § 1.12. The Energy Priorities Statute lists energy conservation and efficiency as a higher priority than renewable generation, such as wind. Here, the applicant does not propose any conservation or efficiency measures. WP&L states the project was designed to meet the RPS requirement and energy conservation cannot be substituted under the energy priorities law.

When construing Wis. Stat § 196.49 and Wis. Stat. § 196.378, it is important to apply two rules of statutory construction:

1. Where two statutes relate to the same subject matter, it is the specific statute that controls the general statute. *Kramer v. City of Hayward*, 57 Wis. 2d 302, 311, 203 N.W.2d 871 (1973).
2. “It is a cardinal rule of statutory construction that conflicts between statutes are not favored and will be held not to exist if the statutes may otherwise be reasonably construed.” *State v. Delaney*, 259 Wis. 2d 77, 84 658 N.W.2d 416 (2003). When statutes on the same subject conflict or are inconsistent with one another, courts must attempt to harmonize them in order to effectuate the legislature’s intent. The statutory construction doctrine of *in pari materia* requires a court to read, apply and construe statutes relating to the same subject matter in a manner that harmonizes them in order to effectuate the legislature’s intent. *Turner v. City of Milwaukee*, 193 Wis. 2d 412, 420, 535 N.W.2d 15 (Ct. App. 1995).

Reviewing these statutes in light of the rules of construction, the Commission construes the RPS statute as more specific than Wis. Stat. § 196.49. Therefore, to the extent there is a conflict between the statutes, the requirements of the RPS statute control.

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<sup>1</sup> The RPS law creates an off-ramp if a utility finds that compliance with the RPS will “result in unreasonable increases in rates.” Wis. Stat. § 196.378(2)(e)2.



Moreover, the Commission balances competing interests and approves this project to address WP&L's need for energy as well as to implement the RPS. To the extent there is any concern that this project may be providing energy sooner than demand indicates, the need to develop renewable energy sources, a priority established by the legislature, outweighs any such concern.

Similarly, for the Commission to implement energy priorities, it must determine and balance whether any higher priority alternatives to a proposed project would be cost-effective, technically feasible, and environmentally sound while meeting the objectives the proposed project is intended to address. Regarding other noncombustible renewable energy resources, no other form of currently available renewable generation is as cost-effective and technically feasible as wind. For these reasons, the Commission concludes that the WP&L project complies with the Energy Priorities Law.

### **Impact on Locational Marginal Prices and Congestion**

To project the hourly locational marginal price (LMP) differences between the Minnesota node where Bent Tree will interconnect with the electric transmission system and the WP&L load node, WP&L performed a review of 2006 and 2007 congestion charges. WP&L found that the LMP in the Bent Tree area tended to be between \$2 and \$4 per MWh higher than in the WP&L load node. WP&L states that, because the LMP price in the Bent Tree area is higher than in the WP&L load zone, energy generated by the project will be paid a premium that not only compensates WP&L for the cost of the load, but produces surplus revenue that would reduce the cost paid by customers.

Commission staff testified that while historical data suggests that the LMP in the Bent Tree area may be higher than the WP&L load node, a 2010 PROMOD simulation suggests that

the LMP at the WP&L load node may actually be higher than the LMP for the Bent Tree area.

This would result in a cost to move energy from Bent Tree to the WP&L load node that could be as high as \$10 per MWh. Commission staff used a \$5 per MWh cost to move energy from Bent Tree to the WP&L load zone in its EGEAS modeling. The results of Commission staff's EGEAS modeling suggest that, even with a cost to move energy of \$5 per MWh, Bent Tree is the least-cost option in all likely modeling scenarios.

### **Environmental Factors**

The proposed project would require no environmental permits from any governmental agency in Wisconsin. Appropriate permit applications for the project are proceeding through the Minnesota Public Utilities Commission (MPUC) process, and applications for other local, state, and federal permits are proceeding through the appropriate agencies.

WP&L's project will have a number of positive environmental effects. The energy produced by the project will avoid many of the impacts that fossil fuel and nuclear electric generation create. The operation of this wind farm will produce none of the air pollutants that are regulated under the federal Clean Air Act. It will release no greenhouse gases, which are the electric industry's principal contribution to global warming and climate change, and it will emit no hazardous air pollutants such as sulfuric acid, hydrochloric acid, ammonia, benzene, arsenic, lead, formaldehyde, or mercury. Furthermore, it will generate power without using any significant amount of water or producing any solid waste.

This project will support Wisconsin's goal of increasing its reliance upon renewable resources. It fits well with existing land uses, will help preserve the agricultural nature of the project area, will impose no reliability, safety, or engineering problems upon the electric system, and will have no undue adverse impacts on environmental values. After weighing all the

elements of WP&L's project, including the conditions imposed by this Final Decision, the Commission finds that authorizing the project will promote the public health and welfare and is in the public interest.

### **Brownfield Siting**

Under Wis. Stat. § 196.49(4), the Commission may not issue a certificate for the construction of electric generating equipment unless it determines that brownfields are used to "the extent practicable." However, Wisconsin does not have a single brownfield site, or set of contiguous sites, that would be of sufficient size and would meet the siting criteria of available wind resources, land, and electric infrastructure. WP&L's project complies with Wis. Stat. § 196.49(4).

### **Compliance with the Wisconsin Environmental Policy Act**

Wisconsin Statute § 1.11 requires all state agencies to consider the environmental impacts of "major actions" that could significantly affect the quality of the human environment. In Wis. Admin. Code ch. PSC 4, the Commission has categorized the types of actions it undertakes for purposes of complying with this law. As provided by this rule, and due to the fact that this project, which was planned, developed, and permitted for construction in a state other than Wisconsin, the Commission categorized this project as a Type III action, which normally requires the preparation of neither an EIS nor an EA. The Commission's review of the application and environmental permitting requirements concluded that the project is unlikely to have a significant impact upon the quality of the human environment. The Commission finds that the requirements of Wis. Stat. § 1.11 and Wis. Admin. Code ch. PSC 4 have been met.

**Project Purpose, Capital Cost, and Schedule**

As noted previously, Bent Tree is necessary for WP&L to meet its RPS requirements for the period 2010 to 2014. WP&L anticipates that additional renewable capacity will be required to meet its entire RPS obligations for 2015, but specific projects that comprise that additional capacity have not yet been identified.

WP&L estimates that the total cost of the project is between \$470,000,000 and \$497,000,000, depending on which turbine model is selected for the project. WP&L's detailed cost estimate is \$497,370,500, based on a commercial operation date of 2010 and current return on CWIP. The detailed cost estimate by plant account is as follows:

<b>Description</b>	<b>Amount</b>
Account 340 – Land	\$100,000
Account 341 – Surfaced Areas, Operations Building	\$16,734,410
Account 344 – Turbine Generators, Engineering, Procurement, Construction Management, Erection	\$456,587,974
Account 345 – Met Towers, Electrical Connection, SCADA	\$18,970,728
Account 345 – Substation	\$4,977,388
<b>Total Project Cost</b>	<b><u>\$497,370,500</u></b>

**Certificate**

WP&L may construct Bent Tree with a generating capacity of up to 200 MW, as described in its application and subsequent filings and as modified by this Final Decision.

**Order**

1. WP&L may construct the Bent Tree Wind Farm in conformance with the design specified in its application and subsequent filings, subject to the conditions specified in this Final Decision.
2. The total gross project cost is estimated to be \$497,370,500.

3. This authorization is for the specific project as described in the application and subsequent filings and at the stated cost. Should the scope, design, or location of the project change significantly, or if the project cost exceeds \$497,370,500 by more than 10 percent, WP&L shall promptly notify the Commission as soon as it becomes aware of the probable change.

4. WP&L shall notify the Commission in writing, within 10 calendar days, of each of the following: the date of commencement of construction of the interconnection substation, the date of commencement of construction of project facilities other than the interconnection substation, and the date that the facilities are placed in service.

5. WP&L shall ensure that all necessary permits have been obtained prior to commencement of construction and operation of the facilities, and it shall submit to the Commission quarterly reports of the status of the environmental permitting process for Bent Tree. The first report is due 90 days after the issuance of this Final Decision and reports shall continue through commencement of operation of the project.

6. WP&L shall submit to the Commission the final actual costs segregated by major accounts within one year after the in-service date. For those accounts or categories where actual costs deviate significantly from those authorized, WP&L shall itemize and explain the reasons for such deviations in the final cost report.

7. Until its facility is fully operational, WP&L shall submit quarterly progress reports to the Commission that summarize the status of construction, the anticipated in-service date, and the overall percent of physical completion. WP&L shall include the date when construction commences in its report for that three-month period. The first report is due for the

Docket 6680-CE-173

quarter ending September 30, 2009, and each report shall be filed within 31 days after the end of the quarter.

8. WP&L shall comply with the requirements of the National Electric Safety Code when constructing, maintaining and operating its facility.

9. WP&L shall notify the Commission in writing within ten days of any decision not to proceed with its project or to enter into any partnership or other arrangement with a third party concerning ownership or operation of the facility.

10. All commitments and conditions of this Final Decision shall apply to WP&L and to its agents, contractors, successors, and assigns.

11. This Final Decision takes effect on the day after it is mailed.

12. Jurisdiction is retained.

Dated at Madison, Wisconsin, July 30, 2009

By the Commission:

  
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Sandra J. Paske  
Secretary to the Commission

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See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN  
610 North Whitney Way  
P.O. Box 7854  
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE  
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE  
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

*PETITION FOR REHEARING*

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

*PETITION FOR JUDICIAL REVIEW*

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.<sup>2</sup> The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: December 17, 2008

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<sup>2</sup> See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

APPENDIX A  
(CONTESTED)

In order to comply with Wis. Stat. § 227.47, the following parties who appeared before the agency are considered parties for purposes of review under Wis. Stat. § 227.53.

Public Service Commission of Wisconsin  
*(Not a party but must be served)*  
610 N. Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

WISCONSIN POWER AND LIGHT COMPANY

Jeff Gray  
Scott R. Smith  
PO Box 77007  
Madison, WI 53707-1007

CITIZENS UTILITY BOARD,  
CLEAN WISCONSIN, and  
RENEW WISCONSIN

Curt F. Pawlisch  
Kira E. Loehr  
Cullen Weston Pines & Bach LLP  
122 West Washington Avenue, Suite 900  
Madison, WI 53703

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 965

Mike Pyne  
1602 South Park Street, Room 220  
Madison, WI 53715

WISCONSIN ELECTRIC POWER COMPANY

Leslie Durski  
231 West Michigan Street  
Milwaukee, WI 53203

WISCONSIN INDUSTRIAL ENERGY GROUP

Steven A. Heinzen  
Godfrey & Kahn, S.C.  
PO Box 2719  
Madison, WI 53701-2719

WISCONSIN PUBLIC SERVICE CORPORATION

Dennis M. Derricks  
Integrus Energy Group, Inc.  
700 North Adams Street  
Green Bay, WI 54301



BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application by Wisconsin Power and Light Company to Construct up to 200 MW of Wind Generation to be Called Bent Tree Wind Farm, in Freeborn County, in South Central Minnesota 6680-CE-173

**COMMISSIONER AZAR'S CONCURRENCE**

It is no secret that I have disagreed with my colleagues on key decisions in this docket. I dissented from the decision to apply the lesser Certificate of Authority (CA) standard to this application rather than the heightened Certificate of Public Convenience and Necessity (CPCN) standard. *See Application by Wisconsin Power and Light Company to Construct up to 200 MW of Wind Generation to be Called Bent Tree Wind Farm, in Freeborn County, in South Central Minnesota*, Public Service Commission of Wisconsin Docket No. 6680-CE-173, *Interim Order, Commissioner Azar's Dissent* (Nov. 6, 2008). While I continue to believe we should apply the CPCN standard in this case (and similar cases in the future), the law of this case requires me to apply the CA standard. Applying the CA standard here, I agree with my colleagues that this project should be approved under the discretionary standard identified in Wis. Stat. § 196.49(3).

In this concurrence, I identify a number of factual findings in the Final Decision that are not based on the elements of the CA statute, but which are based on the requirements of the CPCN statute. I do not make these observations out of a sense of “sour grapes” about the Commission’s earlier decision. Instead, I point out that the actual language of this Final Decision provides further evidence of the sound policy reasons for applying the CPCN standard to this, and other projects like it. To the extent we need statutory changes to apply the CPCN standard in the future, the Commission should be seeking those changes.

Also, in this concurrence, I identify that the dispute over the load forecasts used in this docket is a moot point in light of the discretionary standard of the CA statute and the specific requirements of Wisconsin's Renewable Portfolio Standard (RPS).

### **CPCN Statutory Requirements Identified in the Final Decision**

#### **Finding of Fact #3 (Page 2 of Final Decision)**

This finding of fact identifies that the project "satisfies the reasonable needs of the public for an adequate supply of electric energy." Final Decision at 2. This is not a requirement under the CA statute, but rather it is a requirement under the CPCN statute, Wis. Stat.

§ 196.491(3)(d)2. Because this docket proceeded under the CA statute, I do not believe this finding is properly included in the Final Decision.

#### **Finding of Fact #7 (Page 2 of Final Decision)**

This finding of fact identifies that the "public interest and public convenience and necessity require the completion" of the project. Final Decision at 2. Again, since the Commission decided to apply the CA statute and not the CPCN statute, this finding of fact is inappropriate for this case.

I recognize that the CA statute provides that the Commission may adopt a rule or special order that requires that CA projects be required by the public convenience and necessity. Wis. Stat. § 196.49(3)(b). However, to date, the Commission's rules only require this finding when the Commission does not hold a hearing on the application, which is not the case here. Wis. Admin. Code § PSC 112.07(1).

### **Promotion of Public Health and Welfare and the Public Interest (Pages 10-11 of Final Decision)**

The Final Decision identifies that “the Commission finds that authorizing the project will promote the public health and welfare and is in the public interest.” Final Decision at 10-11. While I agree with this statement, again I do not believe that this is a required finding under the CA statute. This appears to be a standard that the Commission would apply to a CPCN application. *See* Wis. Stat. 196.491(3)(d)3. (establishing a public interest standard with respect to the design and location of proposed facilities); Wis. Stat. § 196.491(3)(d)4. (establishing a public health and welfare standard for proposed facilities).<sup>1</sup> Since we were specifically applying the CA statute, this finding is misplaced and unnecessary in this Final Decision.

### **Project Need and Renewable Energy Requirements**

#### **Project Need (Pages 5-9 of Final Decision)**

In this docket, there was a dispute in the record about the applicant’s demand projections and whether this project was needed to meet the utility’s future demand. I found this dispute to be immaterial in my decision to approve this project under the CA statute.

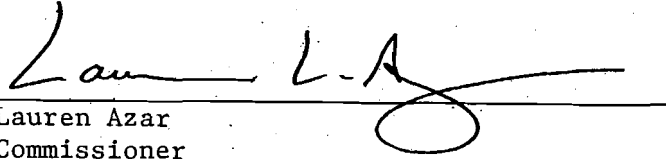
Under the CA statute, at the Commission’s discretion, we may refuse to authorize a project if, among other things, the project will “provide facilities unreasonably in excess or probable future requirements.” Wis. Stat. § 196.49(3)(b)2. This discretionary provision does not require that the Commission find there is a specific “need” for the project. Indeed, under this standard, the Commission could still approve the project even if the Commission found that the project was unnecessary from an energy demand perspective. *See* Final Decision at 7.

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<sup>1</sup> Pursuant to Wis. Admin. Code § PSC 112.07(2), the Commission can add conditions to a project approval that are “necessary to protect the public interest or promote the public convenience and necessity.” However, the CA statute does not require that the Commission find that the proposed project, as a whole, meet these requirements.

As the Final Decision notes, in this case we are operating under the discretionary standard of Wis. Stat. § 196.49(3) and we must consider the RPS requirements of Wis. Stat. § 196.378. Under these facts, the Commission does not need to resolve any dispute about the utility's load forecast. Since WP&L must obtain or generate a certain amount of its energy from renewable sources, this project will not lead to generation "in excess of future probable requirements."

Dated at Madison, Wisconsin, this 30th day of July, 2009.

  
Lauren Azar  
Commissioner

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